91-234

Supreme Court, U.S.
FILED
JUL 22 1991
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

RONALD W. DAVENPORT - PETITIONER

vs.

JEFFREY H. WHITE,
JOHN P. WORTMAN, - RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RONALD W. DAVENPORT
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PRO PER, Without Counsel

QUESTION PRESENTED

When an individuals rights under the United States Constitution have been violated, does that individual have a cause for a civil action against those persons who violated said individuals secured rights?

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No._____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1990

Ronald W. Davenport, Petitioner

vs.

Jeffrey H. White,
John P. Wortman, Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner, Ronald W. Davenport, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit for affirming that petitioner failed to state a claim for which relief can be granted, and for awarding damages to the respondents because of the Circuit Courts opinion.

OPINIONS BELOW

The opinion of the Court of Appeals appears in Appendix B to this petition. The order of the District Court for the Eastern District of Michigan appears in Appendix A to this petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on February 25, 1991. A petition for reconsideration was filed on March 26, 1991. The Court of Appeals denial of Petition for Reconsideration was issued on April 25, 1991 and is set forth in Appendix C. This Court's jurisdiction is invoked under Title 28, U.S.C. sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments 5 and 7 to the United States Constitution as set forth in Appendix D and E respectively, and sec. 6331(a) of the Internal Revenue Code is set forth in Appendix F to this petition.

STATEMENT OF THE CASE

The United States District Court, Eastern District of Michigan, had jurisdiction pursuant to Title 28 U.S.C. sec. 1343. On January 27, 1990 petitioner filed an action in the District Court for the Eastern District of Michigan against Jeffrey H. White, and John P. Wortman, for deprivation of rights under color of law, Title 42 U.S.C.A. sec. 1983. Both White and Wortman were served personally, by a process server, in this action. On May 16, 1990 the District Court issued an order which is found in Appendix A. Notice of Appeal was filed by the petitioner on July 2, 1990. Then about December 7, 1990 petitioner filed a reply brief with the Circuit Court. The Circuit Court issued an order on February 25, 1991 and is found in Appendix B.

Motion for reconsideration was filed by the petitioner on or about March 26, 1991. The Circuit Court's denial of motion for rehearing was issued on April 25, 1991 and is found in Appendix C. The petitioner attempted to show

to the District and Circuit Courts' that the respondents violated the petitioner's Constitutuionally secured rights, by working together to deprive the petitioner of his property (i.e. wages), under a pretense of law that the petitioner had an income tax liability.

The respondents confiscated the petitioner's wages by and through a "Notice of Levy" pursuant to Title 26 U.S.C.A. sec. 6331(a). A jurisdictional defect exists in this instance, for the respondents, because the petitioner does not meet any of the requirements stated in section 6331(a) of Title 26U.S.C.A. which, in part states:

> "Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official."

Therefore, the respondents have used a section of the IRC as a lawful right to deprive the petitioner of his property, in which case they have committed a fraudulent act.

Secondly, the respondents totally disregarding the petitioner's Constitutional rights pursuant to the 5th and 7th Amendments.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons: This petition presents an issue resolved by this Court; and the opinion below conflicts with previous decisions of this Court and with the decision of another Circuit. This Court held in Flora v. United States, 362 U.S. 145 (1960) that:

> "Our tax system is based upon voluntary assessment and payment, not upon distraint" (emphasis added).

Further, the Ninth Circuit held in the case of Bothke v. Terry, 713 F. 2d 1405 (1983) that:

> "For condition precedent to statutorily authorized levy to be met, there must be lawful assessment, either voluntary one by taxpayer or one procedurally proper by Internal Revenue Service. 26 U.S.C.A. sec. 6331(a)."

AND

> "Because income tax system is based on voluntary self-assessment, rather than distraint, Internal Revenue Service may assess tax only in certain circumstances

and in conformity with proper procedures. 26 U.S.C.A. sec. 6331(a)."

Also from the Bothke case it was said:

> "Like police officers, whose important duty to protect public may involve deprivations of liberty through arrests, are entitled only to qualified immunity, Internal Revenue Service agents who are relatively low-level executive officers with correspondingly narrow range of official discretion are not entitled to absolute immunity. 42 U.S.C.A. sec. 1983; U.S.C.A. Const. Amends. 1, 4-6, 8-10."

Therefore, the fact that this Court, as well as the Ninth Circuit Court, have held that our income tax system is voluntary, Mr. White could not have been acting in good faith when assessing an income tax that the petitioner had not incurred a liability for, and, levying the petitioner's wages by claiming he had a right to petitioner's property by use of sec. 6331(a) of the IRC. Mr. White committed an act of fraud, and with the help of Mr. Wortman the two of them deprived the petitioner of his property under color of law.

This Court should grant certiorari here to explicity rule that our tax system is voluntary and any action taken by IRS agents to fraudu-

lently impose a tax liability upon an individual, can lawfully be held liable pursuant to Title 42 U.S.C.A. sec. 1983 and, further, to resolve the conflict between the Circuits created by the Sixth Circuit's decision in this matter.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

DATED: July 19, 1991

Respectfully submitted

Ronald W. Davenport

Ronald W. Davenport
In PRO PER, Without Counsel

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT — EASTERN DISTRICT OF MICHIGAN

RONALD W. DAVENPORT, Plaintiff, — 90-CV-30005

v.

JEFFREY H. WHITE, JOHN P. WORTMAN, Defendants — JUDGE JAMES HARVEY

Decision by Court.

IT IS ORDERED AND ADJUDGED

that plaintiff take nothing and that this case be dismissed with prejudice.

clerk DAVID R. SHERWOOD

(by) deputy clerk MARIETTA H. BAURGRIE

DATE 5/16/90

APPENDIX A

No. 90-1801

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RONALD W. DAVENPORT,
Plaintiff-Appellant,

v.

O R D E R

JEFFREY H. WHITE; JOHN P. WORTMAN,
Defendents-Appellees.

BEFORE: RYAN and NORRIS, Circuit Judges; and RUBIN, District Judge.*

This case has been referred to a panel of the court pirsuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the briefs and record, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Ronald W. Davenport appeals the dismissal of his civil rights complaint for failure to state a claim upon which relief can be granted. Plaintiff alleged that the defendant I.R.S. revenue officer conspired with the defendant employee relations superintendent to levy upon plaintiff's wages and to obtain his employment records. Plaintiff asserted numerous tax protester arguments as well. The district court

concluded that plaintiff did not state a claim upon which relief can be granted under the authority of Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), or otherwise.

Upon consideration, we affirm the judgment of the district court for the reasons stated in its memorandum and order filed May 14, 1990. Rule 9(b)(5), Rules of the Sixth Circuit. Furthermore, we conclude that defendants' requests for damages against plaintiff are well taken because this is not the first instance in which plaintiff has pursued frivolous claims before this court. See Davenport v. Commissioner, No. 88-1581 (6th Cir. Feb. 3)(unpublished), cert. denied, 109 S. Ct. 3192 (1989). Accordingly, damages of $1200 are awarded each defendant ($2400 total) pursuant to Fed. R. App. P. 38. See Schoffner v. Commissioner, 812 F 2d 292, 293-94 (6th Cir. 1987)(per curiam).

ENTERED BY ORDER OF THE COURT

Clerk

*The Honorable Carl B. Rubin, U.S. District Judge for the Southern District of Ohio, sitting by designation.

No. 90-1801

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

O R D E R

RONALD W. DAVENPORT
Plaintiff-Appellant

v.

JEFFREY H. WHITE; JOHN P. WORTMAN
Defendants-Appellees

BEFORE: RYAN and NORRIS, Circuit Judges; RUBIN, Chief District Judge*

Upon consideration of the appellant's petition for rehearing before the original panel,

It is ORDERED that the petition be, and it hereby is, DENIED.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

*The Hon. Carl B. Rubin, U.S. District Court for the Southern District of Ohio sitting by designation.

APPENDIX C

AMENDMENT V TO THE UNITED STATES CONSTITUTION

No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VII TO THE UNITED STATES CONSTITUTION

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

SECTION 6331 OF THE INTERNAL REVENUE CODE

Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the Distict of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official.

TITLE 42 U.S.C.A. SECTION 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jursidiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia